



PART 201 CITIZEN'S GUIDE

Baseline Environmental Assessments (BEA)

*Liability protection for new or prospective owners
or operators of contaminated property*

This guidance is designed for persons who are buying, leasing, or foreclosing on property that might be contaminated. A person can buy, lease, or foreclose on contaminated property and not become liable for cleanup of the property (provided they did not cause the contamination) if they: 1) conduct a baseline environmental assessment (BEA) and, 2) disclose it to the Department of Environmental Quality (DEQ) and subsequent purchasers and transferees of the property, as specifically outlined under Part 201 (Environmental Remediation) of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA).

If it is demonstrated the property is a “facility” (see page 2), this guide will assist the new owner or operator of the property in conducting a BEA and obtaining liability protection for the existing contamination.

◀◀ NOTE ▶▶

There are immediate time frames that must be met in conducting and disclosing a BEA to the DEQ; please refer to the section on time frames.

A thorough review of the statute/administrative rules/guidelines should be completed before making site-specific decisions.

The Part 201 statute, BEA and Due Care Administrative Rules, BEA Submittal Form, and guidelines are available at this DEQ web site: www.michigan.gov/bea.

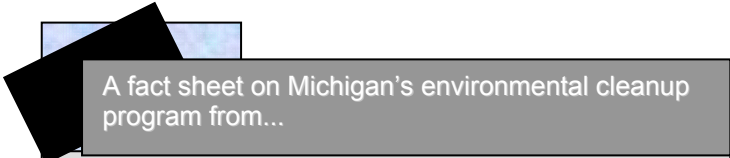
DUE DILIGENCE

Is this property contaminated?

A potential owner or operator is obligated to conduct all appropriate inquiry (or, as it is often called, perform due diligence) to evaluate whether environmental contamination is potentially present on a piece of property. The initial step is to ask the seller or owner about

any known environmental conditions. The next step is to have an environmental professional (see *Environmental Professional*) conduct an environmental assessment of the property using the federal All Appropriate Inquiry (AAI) process [40 CFR 312] or the American Society for Testing Methods (ASTM) Phase I Environmental Assessment process [1527-05].

The AAI or Phase I assessment involves inspecting the property and collecting historical and current information to evaluate the potential for environmental contamination. The AAI assessment involves a review of regulatory agency files, historical maps, and past uses to evaluate the potential for contamination to exist. A walk-through of the property can identify potential contamination sources. The AAI or Phase I report will identify conditions indicative of an actual or threatened release of hazardous substances -- often called Recognized Environmental Concerns (REC). An environmental professional can assist in determining if it is necessary to proceed to a Phase II (or equivalent) assessment. The Phase II assessment involves further investigation into the RECs, including collecting soil and/or groundwater samples, determining if underground tanks are present, and identifying abandoned containers and their contents, etc.



A fact sheet on Michigan's environmental cleanup program from...



Michigan Department of Environmental Quality
Remediation Division

PO Box 30426, Lansing, MI 48909-7926

Main Telephone: 517-373-9837

www.michigan.gov/degrd

Rick Snyder, Governor * Dan Wyant, Director

IS THIS PROPERTY A FACILITY?

The information gained in the AAI or Phase I and Phase II assessments is used to determine whether the property is a facility under Part 201. The concentration of hazardous substances at the property is compared to the unrestricted residential criteria -- the state's most protective cleanup criteria, which are available on the DEQ's web site at www.michigan.gov/deqrrd (scroll down and select Operational Memoranda for Part 201 and 213, select the soil or groundwater tables under RRD Op Memo 1). If the contaminant concentrations on a property do not exceed the unrestricted residential criteria, then the property is not a facility as defined by Part 201. Documentation of this conclusion should be maintained by the new owner or operator to show that they have conducted due diligence in accordance with Section 20126(3)(h) of the NREPA. A BEA is only performed on a contaminated property that meets the definition of a Part 201 "facility." If the contaminant concentration does exceed one or more residential criteria, then the property is a facility as defined by Part 201. A BEA may be the next step for a person becoming the owner or operator of property that is a facility. Potential owners/operators may wish to discuss the necessity for a BEA with their environmental professionals and their attorneys. There may be other options and exemptions for resolving potential liability in certain circumstances.

BASELINE ENVIRONMENTAL ASSESSMENTS

Part 201 defines a BEA as "a written document that describes the results of an all appropriate inquiry and the sampling and analysis that confirm that the property is a facility" so the new owner or operator is not held liable for cleaning up contamination caused by others. The BEA provides liability protection for known and unknown contamination under specific programs regulated by the NREPA:

- ▶ Part 201 (Environmental Remediation)

- ▶ Part 213 (Leaking Underground Storage Tanks)
- ▶ Part 31 (Water Resources Protection)
- ▶ Part 17 (MI Environmental Protection Act)
- ▶ Part 615 (Supervisor of Wells)
- ▶ Part 625 (Mineral Wells)

A BEA does not provide protection from liability under other state and federal laws, including:

- ▶ Landfills regulated under Part 115 of NREPA.
- ▶ Treatment, Storage, and Disposal (TSD) facilities regulated by the federal Resource Conservation and Recovery Act (RCRA) and Part 111 (Hazardous Waste Management) of the NREPA.
- ▶ Underground storage tank operational requirements under Part 211 of the NREPA.
- ▶ Federal Comprehensive Environmental Response and Compensation Liability Act (CERCLA) and Superfund. The U.S. Environmental Protection Agency (EPA) and DEQ have entered into an agreement that the EPA will not take action against a person who has done a BEA unless the facility is on the federal National Priority List, federal funds have been spent to respond to conditions at the facility, or there is an imminent danger to the public health, safety, welfare, or the environment.

TIME FRAMES TO CONDUCT A BEA

A BEA must be conducted prior to or within 45 days after becoming the owner or operator. Conducted means the AAI or Phase I report, the field work, and sample analysis are all completed, and the BEA report is written.

DISCLOSURE OF A BEA TO THE DEQ AND TO SUBSEQUENT PURCHASERS OR TRANSFEREES

To obtain and maintain liability protection, Part 201 requires that a BEA be submitted to the DEQ and to subsequent purchasers or transferees, including lessees. The BEA must

be submitted to the DEQ within 6 months after the earlier date of becoming the owner, operator, or of foreclosure. Alternative time frames are provided for new owners or operators of subsurface oil, gas, storage, or mineral rights regulated under Parts 615 or 625 of the NREPA (R 299.5903(8)). Refer specifically to R 299.5903(9) of the NREPA to establish the time frame for a BEA submittal when an agency acquiring property under the Uniform Condemnation Procedures Act (Act 87 of 1980) is considered an owner or operator.

The BEA must be submitted to the DEQ District Office for the county in which the property is located. A map showing the District boundaries and mailing addresses is available at the DEQ-BEA web site: www.michigan.gov/bea. The BEA must also be submitted to subsequent purchasers or transferees, including lessees, prior to transfer of the interest in the property.

BEA CONTENT AND FORMS

The form for submitting a BEA is available on the DEQ-BEA web page (see above). A person who can legally bind the owner or operator, such as the owner or president of a company, must sign the submittal form. The content of a BEA report is outlined on the third page of the submittal form.

ENVIRONMENTAL PROFESSIONALS

A BEA is usually performed by an environmental consultant. The required AAI or Phase I environmental assessment report must be prepared by an environmental professional as defined in the AAI Federal Rules or ASTM standards (see *links in Sources of Information*). Obtaining an environmental professional, consultant or engineer, can be addressed in a

manner of ways: in the yellow pages of the telephone book under Environmental, Ecological, or Engineering; by asking your financial institution, real estate agency, or trade association for references; or by word of mouth, etc. It's wise to ask the professional or consultant for references and make inquiries as to the number of BEAs they have successfully completed. The DEQ cannot provide recommendations for environmental professionals, consultants or engineers.

Corrective actions on a regulated underground storage tank site must be conducted by a Qualified Consultant (QC). A list of QCs is available at the DEQ offices and at www.michigan.gov/deqrrd (scroll to Leaking Underground Storage Tanks). Although a QC is not required for a BEA, these consulting companies often prepare BEAs.

SOURCES OF INFORMATION

DEQ Environmental Assistance Ctr: 1-800-662-9278
 DEQ BEA-Due Care Web Page: www.michigan.gov/bea
 DEQ Office Locations: www.michigan.gov/bea
 DEQ Remediation Division Web: www.michigan.gov/deqrrd
 ASTM Web Page: www.astm.org
 EPA/AAI Web Page: www.epa.gov/brownfields/aa

DEQ CONTACTS

DEQ Remediation Division

Part 201 (Environmental Remediation) and
 Part 213 (Leaking Underground Storage Tanks)
 Jeanne Schlaufman
 586-753-3823
schlaufmanj1@michigan.gov

DEQ Office of Geological Survey

Part 615 (Supervisor of Wells – oil/gas wells) and
 Part 625 (Mineral Wells)
 Janice Smith
 517-241-1551
smithj6@michigan.gov

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